IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 2362 of 2007

For Approval and Signature:

HONOURABLE MS.JUSTICE H.N.DEVANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MAFABHAI MOTIBHAI AND OTHERS
Versus
STATE OF GUJARAT

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Appearance :
MR YS LAKHANI with MR ASHISH M DAGLI for the Petitioners
MR AY KOGJE, ADDITIONAL PUBLIC PROSECUTOR for the Respondent

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CORAM : HONOURABLE MS.JUSTICE H.N.DEVANI

Date : 17/12/2007

ORAL JUDGMENT

1. By this petition under Articles 226 and 227 of the Constitution of India, the petitioners have prayed for the following substantive reliefs:

> “32. A) This Hon'ble Court may be pleased to admit this Special Criminal Application.
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> (B) This Hon'ble Court may be pleased to allow this Special Criminal Application by quashing and setting aside the order made the learned Judge while recording the evidence of Shakstisinh Natwarsinh Zala PW No.13 exhi.66 in sessions case NO.22 of 2006 of giving exhibit to the document at exhi.67 and findings recorded in paragraph 1 of the Chief examination of the witness in the facts and circumstances of the present case.”

2. The facts of the case stated briefly are that while recording evidence in Sessions Case No.22 of 2006, during the course of Examination in Chief of the complainant an objection was raised on behalf of the defence against exhibiting the complaint lodged by the complainant as the First Information Report. Pursuant thereto, the then Presiding Officer and Additional Sessions Judge, Fast Track court No.1, Dhangadhra by an order dated 19.05.2007 after considering the submissions advanced on behalf of the parties did not deem it fit to exhibit the complaint of the complainant at that stage as the issue as to whether the same can be considered to be the First Information Report can be decided only after the depositions of the Investigating Officer and other police witnesses are recorded. The learned Judge accordingly found it proper to give a mark to the said document.

3. Subsequently, it appears that during the course of recording the deposition of the Investigating Officer, Shaktisinh Natwarsinh

Zala, the said complaint was sought to be exhibited. At that stage, an objection was raised by the defence to the effect that the telephone vardhy produced vide Exh.64 or the extract of the telephone register should be considered as the First Information Report whereas the said statement should be considered to be a statement under Section 162 of the Code. However, the learned Additional Sessions Judge, Dhangadhra held that the incomplete entries regarding commission of a cognizable offence made in the telephone register or Station Diary or Janva Jog Register by the PSO in charge cannot be considered to be the First Information Report regarding commission of a cognizable offence. Placing reliance upon a decision of this Court in the case of Ramilaben Khatri Vs. State of Gujarat 2002 (1) GLR 783, the learned Judge directed that the said document be admitted as evidence as Exhibit 67.

4. Thereafter, an application was moved by the defence, drawing the attention of the Court to the earlier order passed on 19.05.2007 and praying that the document Exh.67 be de-exhibited.

5. The learned Judge by an order dated 01.12.2007, observed that there is no dispute that the defence had made an application Exh.45 and had prayed that the telephone vardhy Exh.64 be considered as the First Information Report and that his predecessor had partly allowed the application and had held that the said issue be decided after conclusion of trial. However, during the course of recording of evidence of the Investigating Officer, the prosecution

had submitted that the complaint given by the complainant be considered as the FIR and after hearing the learned Advocates for the parties, the learned Judge had decided the issue placing reliance on a decision of this Court. At that time, his attention had not been drawn to the application Exh,45 and the decision of the Supreme Court cited in the said application. The learned Judge was of the view that once a document has been proved and admitted in evidence under the provisions of the Indian Evidence Act, there is no provision for disproving the same. The learned Judge was also of the view that once an order had been passed by the said Court holding that the complaint lodged by the complainant be considered as the First Information Report, the same had become final qua that Court and the said Court had no power to alter or interfere with the said order. The learned Judge accordingly, rejected the application Exh.87 made by the defence, which has given rise to the present petition.

6. Heard Mr.Y.S.lakhani, learned advocate with Mr.Ashish M.Dagli, learned advocate for the petitioners and Mr.A.Y.Kogje, learned Additional Public Prosecutor, for the respondent – State of Gujarat.

7. Having considered the submissions advanced by the learned advocates for the parties and keeping in view the peculiar facts of the case, this Court is of the view that the ends of justice would be met if without entering into the merits of the case, the order passed

by the learned Judge while recording the evidence of Shaktisinh Natwarsinh Zala, PW-13 whereby the complaint lodged by the complainant has been exhibited and it has been held that the said complaint has to be considered as the First Information Report is set aside; and without prejudice to the rights of the parties, it is left open to the trial Court to decide the issue as to which document should be considered to be the First Information Report at the conclusion of the trial while the final arguments are heard. It would be open to the learned advocates for the parties to raise all contentions in connection with the issue as to which document should be considered as the First Information Report. It is further clarified that setting aside the said order whereby the complaint has been exhibited and has been directed to be considered as the First Information Report, shall in no manner prejudice the right of the prosecution to contend that the said complaint is required to be treated as the First Information Report and is accordingly required to be exhibited as such.

8. For the foregoing reasons, the petition succeeds and is accordingly allowed. The order passed by the learned Additional Sessions Judge while recording the evidence of PW-13 Shaktisinh Natwarsinh Zala (Exh.66) in Sessions Case No.22 of 2006 whereby the complaint lodged by the complainant has been admitted in evidence vide Exh.67 and it has been directed that the same be considered as the First Information Report, is hereby quashed and set aside without prejudice to the rights of the parties as observed

hereinabove and subject to the clarification noted hereinabove.

9. Rule is made absolute accordingly.

(H.N.DEVANI, J.)

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